IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Writ Petition No. 565 of 2003 (M/S)

1. M/S Shankar Industries, Kotdwar,
   District Pauri Garhwal through Gyan Chand
   S/o Sri Mishri Lal, a Partner of partnership firm
   M/S Shankar Industries, Govind Nagar,
   Kotdwar District Pauri Garhwal.
2. Gyan Chand S/o Sri Mishri Lal,
   R/o Govind Nagar,
   Kotdwar District Pauri Garhwal.

... Petitioners

Vs

Narendra Kumar Agarwal, S/o Sri Late Makhan Lal,
Proprietor of Firm Narendra Kumar Suresh Kumar
Address Nazibabad Road,
Kotdwar District Pauri Garhwal.

... Respondent

Mr. C.K. Sharma, Advocate for the petitioners.
Mr. Rajendra Dobhal, Advocate for the respondent.

Date: 18th August, 2006

Hon'ble Rajesh Tandon, J.

Heard Mr. C.K. Sharma, learned counsel for the petitioners and Mr. Rajendra Dobhal, learned counsel for the respondent.

2. By the present writ petition the petitioner has prayed for setting aside the order dated 26.3.1998, passed by the Civil Judge (S.D.) and the order dated 25.3.2003 passed by the A.D.J. which are annexed as Annexures 4 and 5 respectively to this writ petition.

3. Briefly stated a suit was filed by the respondent against the petitioners praying for recovery of Rs. 58,430.03/-. The suit was filed on 21.12.1985 as will appear from the plaint without paying the full Court fees. The learned Lower Court registered the suit as Misc. Case No. 6 of 1986 and under

Section 149 of the Code of Civil Procedure, allowed time to the respondent to pay the deficient Court fees by 29.03.1996. But the respondent did not pay the court fees and on 06.02.1987, the Misc. Case No. 6 of 1986 was dismissed for non-compliance of the order of the Court by the respondent to pay the court fees. Thereafter on 07.03.1987, the respondent moved an application before the Civil Judger for setting aside the order dated 06.02.1987. The learned Lower Court registered the Application dated 07.03.1987 as Misc. Case No. 12 of 1987. On 06.09.1990, the Lower Court allowed the application and recalled the order dated 06.02.1987 passed in Misc. Case No. 6 of 1986 and fixed 21.09.1990 as the date by which the respondent was to deposit the deficient court fees. Thereafter, on 25.10.1991, as per payment of Court Fees, Rs. 600/- was paid by the respondent and the learned lower court again granted time to the respondent to pay the remaining court fees. On 19.12.1991, the Misc. Case No. 6 of 1986 was again dismissed for non-compliance of the order of the court for payment for court fees. Thereafter, another application was moved for the respondent for setting aside the order dated 19.12.1991 and the same was registered as Misc. Case No. 25 of 1991. The said Misc. Case No. 25 of 1991 was allowed and on 20.12.1991 the Lower court restored the Misc. Case No. 6 of 1986 and allowed time to the respondent to pay the remaining court fees in Misc. Case No. 6 of 1986. Thereafter, on 15.05.1992 the respondent deposited court fees of Rs. 1500/- and on 19.06.1992, the remaining court fees was paid by the respondent.

4. The Lower Court issued notices to the defendants (petitioners herein) and directed them to file written statement. The petitioners filed an application under Order 7 Rule 11 C.P.C. stating that after the dismissal of Misc. Case No. 6 of

1986 on 06.02.1987 for non-compliance of the order of the court to pay the court fees, the suit can only be said to have been filed on 06.09.1990 and thus, the suit being time barred is liable to be dismissed.

5. The Civil Judge (SD) on 26.03.1998 rejected the petitioners' objection and held that the suit shall be treated as filed on 31.01.1986 and is within time.

6. The petitioners, thereafter, preferred an appeal before the District Judge, Pauri Garhwal against the order dated 26.03.1998 passed by the Civil Judge (SD). The said appeal was registered as Misc. Appeal No. 33 of 1998. The said appeal was also dismissed by the learned Addl. District Judge (Fast Track), Pauri Garhwal vide order dated 25.03.2003.

7. In the order dated 25.03.2003, the appellate court held that under Order 7 Rule 11 C.P.C., no notice to the petitioners are required for hearing the application for revival of the suit, which had been dismissed for non-payment of the court fees. The appellate court has also confirmed the order passed by the trial court on 26.03.1998.

8. A counter affidavit has been filed by the respondent. In paragraph 7 of the counter affidavit, it has been stated that the entire court fees has been paid by the respondent (plaintiff) on 19.06.1992. However, the order dated 06.02.1987 was recalled on the application filed by the respondent on 06.09.1990. A perusal of paragraph 7 of the counter affidavit shows as under:

> "That in reply to the contents of paragraph no. 6 of the civil petition, it is stated here that the

payment of court fees is a matter between the plaintiff / respondent and Court, the defendants / petitioners have no concern with the same. It is further submitted here that the plaintiff / respondent has already paid the entire court fee on 19.06.1992 and, thereafter, the proceedings of suit was going on, but the defendants / petitioners have been trying to linger on the proceedings of suit on one pretext after another."

9. It is true that Section 149 of the Code of Civil Procedure provides sufficient opportunities to pay the court fees. Section 149 of the Code of Civil Procedure reads as under:

> "**149. Power to make up deficiency of Court-fees.** –
>
> Where the whole or any part of any fee prescribed for any document by the law for the time being in force relating to Court-fees has not been paid, the Court may, in its discretion, at any stage, allow the person, by whom such fee is payable, to pay the whole or part, as the case may be, of such Court-fee; and upon such payment the document, in respect of which such fee is payable, shall have the same force and effect as if such fee had been paid in the first instance."

10. Consequently, I find no ground to interfere under Article 226/227 of the Constitution of India. However, in the interest of justice, both the parties may be allowed to lead their evidence and the suit may be decided expeditiously.

11. In view of the above, application under Order 7 Rule 11 C.P.C. is rejected subject to the condition that the liability of interest shall not accrue so far as from the date of filing of the suit to the date of payment of court fee i.e. from 21.12.1985 to 19.06.1992.

12. It is also directed that the Suit No. 6 of 1986 shall be disposed of within a period of four months from the date of production of certified copy of this order.

13. With the aforesaid directions, the writ petition is disposed of.

(Rajesh Tandon, J.)